

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Case No. 2:17-CR-311 JCM (GWF)

Plaintiff(s),

ORDER

V.

LUIS ANTONIO ORTIZ-MENJIVAR,

Defendant(s).

Presently before the court is defendant Luis Ortiz-Menjivar's motion for reconsideration of Magistrate Judge Foley's restraint order. (ECF No. 17). The government filed a response. (ECF No. 18). Defendant has not filed a reply, and the time for doing so has since passed.

A district judge “may reconsider any pretrial matter [adjudicated by the magistrate judge] . . . where it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); LR IB 3-1(a). The district judge may “affirm, reverse or modify, in whole or in part, the ruling made by the magistrate judge.” LR IB 3-1(b). Under the “clearly erroneous” standard, the magistrate judge’s ruling must be accepted unless, after a review of the record, the court is “left with the definite and firm conviction that a mistake has been committed.” *United States v. Silverman*, 861 F.2d 571, 576-77 (9th Cir.1998).

Defendant cites *United States v. Sanchez-Gomez*, 859 F.3d 649 (9th Cir. 2017) for the proposition that a defendant must be free from restraint unless there is “evidence of disruptive courtroom behavior, attempts to escape from custody, assaults, or attempted assaults while in custody, or a pattern of defiant behavior toward correction officials and judicial authorities.” (ECF No. 17).

On May 14, 2018, the United States Supreme Court vacated the judgment of the Ninth Circuit in *Sanchez-Gomez* and remanded the case with instructions to dismiss as moot. As defendant's argument relies exclusively on the now-vacated *Sanchez-Gomez* decision, the court will deny defendant's motion.¹

5 | Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion for reconsideration (ECF No. 17) be, and the same hereby is, DENIED.

8 DATED July 2, 2018.

Xem C. Mahan
UNITED STATES DISTRICT JUDGE

¹ Further, Magistrate Judge Foley's order demonstrates that he considered defendant's individual circumstances, including his criminal history and prior illegal re-entry, when determining the appropriate level of courtroom restraints. *See* (ECF Nos. 5, 9).